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The Solicitors' Journal

[ESTABLISHED 1857.] [REGISTERED AS A NEWSPAPER.]

VOL. LXXIX. No. 17 [PAGES 293 TO 308]. Saturday, April 27, 1935. PUBLISHED WEEKLY. PRICE ONE SHILLING.

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VOL. LXXIX. **Saturday, April 27, 1935.** No. 17

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Current Topics.

Business of Courts: Circuits.

SINCE the appearance of our last issue particulars of the evidence given by SWIFT, J., before the Royal Commission on the Dispatch of Business at Common Law have become available. The learned judge's evidence was concerned with two subjects—the modification of circuits and the advisability of fixing a retiring age for judges. On the first point reference was made to the report of the committee over which the learned judge himself presided and which was appointed to consider the re-arrangement of circuits in the interests of dispatch of business and economy. That report, which was published in 1923, indicated that the power under the Judicature Act, 1875, to shift circuits about had never been utilised. Nor did the committee advise the Lord Chancellor to use it without again going to Parliament. Since then, however, the learned judge noted, the Judicature Act of 1925 had been passed repeating the powers embodied in the earlier Act and conferring additional powers for the postponement of assizes in individual places (*ibid.* s. 77). His lordship alluded to the absence of any practical result as a result of past activities. Recommendations as to the alteration of circuits had been passed and advocated ever since he could remember having anything to do with the law and there had been many inquiries, but nothing was done. In reply to a suggestion by Lord PEEL, the chairman of the Commission, that the learned judge desired some instrument more powerful than an Order in Council, SWIFT, J., observed that he would like to have an Act of Parliament which would say, "This must be done." As soon as some individual had got to deal with these matters he was up against all the vested interests and would not carry them out. "If," the learned judge continued, "you have an Act of Parliament definitely abolishing assize centres such as Appleby, Oakham and Huntingdon, there would be no difficulty about the matter in the future, but, being left to an Order in Council or an Order made by the Lord Chief Justice or the Lord Chancellor on the recommendation of the Lord Chief Justice, whichever it is, under s. 77, it is very difficult to get it done." The abolishing of certain centres altogether, leaving it, if occasion arose, for a special commission to hold assize there, was advocated. It was thought that places such as those mentioned above should cease to be assize centres and that the number of assize towns in counties such as Yorkshire and Lancashire should not be extended. The learned judge, who considered that the plan advocated by the report of the committee of 1923 might be carried out with advantage to the public service, alluded to the fact that the whole matter had been investigated afresh by the Business of the Courts Committee, and stated that, provided the recommendations of either one committee or the other were put into an Act of Parliament, he did not mind which particular detail was adopted.

Retiring Age for Judges.

SWIFT, J., intimated that he was emphatically opposed to a retiring age being fixed for judges of the Supreme Court of Judicature. The adoption of such a principle would be ineffective in regard to judges past their work but under the age fixed, and there was no reason why one competent to do his work should not continue to do it after reaching such an age as might be determined. The learned judge was opposed to interference in any way with the present system, which had worked extremely well as far as he knew. By the present system his lordship had regard to the influence which the Lord Chancellor might be expected to be able to bring to bear upon a judge who, by reason of age, had become incompetent and mentioned one case in which the Lord Chancellor had said to a judge, "You are not very well; you had better retire," and the judge had taken the hint. His lordship suggested that in a case where a judge became incompetent through age and gentle persuasion failed, a Lord Chancellor should tell him that, if he persisted in going on, he would have to ask Parliament to remove him on the ground that he was incompetent. The judge would not stay after that. In commending the existing system the learned judge referred to his experience of 40 years in the legal profession—a period during which he remembered very few of whom it could be said that the person concerned had gone on doing the work after it was recognised that he was too old, and an existing example was given of what the country might have lost if a retiring age of 70 had been fixed by statute.

Clearance Order Appeals.

THE important debate in the consideration by a Standing Committee of the House of Commons of the proposed insertion in the Housing Bill of a clause giving a right of appeal to county courts in respect of the demolition of individual houses in areas subject to clearance orders was concluded last Tuesday week, when the motion for the insertion of such a clause was defeated by twenty-eight votes to thirteen. We have already gone into the question in some detail, and it is, therefore, proposed to confine our attention here to the statement made by the Minister of Health which contains the reasons for refusing to individual owners of houses in the areas concerned a right of appeal to the county court. Sir HILTON YOUNG began by suggesting that the procedure of reference to the county court in the case of demolition orders had been put into the Housing Act, 1930, wrongly, in order, as it was thought, to save time and expense. Recourse to the county court in those cases had not, it was urged, turned out to be a good

arrangement, and property owners would be well advised to seek to amend it in their own interests. Sir HILTON went on to say that the rights of the community had to be reconciled with the rights of the individual. The Bill raised the issue of the principles of social justice and the principles of private justice. The most careful desire, it was intimated, had been shown not to sacrifice the interests of the latter to even the largest interests of the former, because it was thought that the two were reconcilable. Complaints against the present procedure were asserted to have been almost non-existent, and when traced to their roots had not been found justified. No procedure that could be devised would get rid of marginal cases. The present procedure was the most practicable for reducing errors that might be made. It did justice and was recognised to do so by the parties themselves. The existence of bias against the property owner in the Ministry of Health was strenuously denied. The inspectors were scrupulously anxious to give justice and fair play to the private owners. The most noteworthy point was, we think, made when it was said that the issue whether houses were fit for human habitation was not analogous to an issue that was interpreted in the Law Courts. It could only be decided by the national conscience expressing itself through the House of Commons and coming to a head in the policy being administered by the Minister who was responsible to Parliament.

Local Acts and Open Spaces.

THE London County Council (General Powers) Bill passed the Third Reading stage in the House of Commons last Thursday week. About a month earlier a letter appeared in *The Times* from a member of one of the Metropolitan borough councils in which objection was taken to a number of powers relating to the closure, wholly or partial, of public spaces contained in the Measure. The writer drew attention to clauses empowering the local authority to close parks and open spaces for any of the purposes there specified, including its use for games and recreation, such as for golf courses, rifle ranges, etc., and to prohibit the admission of the public, except on payment of a charge. The absence of limit in respect of time or the extent of the closure in some clauses of this character is emphasised, though, as the same writer points out in a further letter, an amendment provides that some part of an open space shall be left open (without, however, specifying what part or portion of the total area). This section of the Bill (Pt. V) applies to every park and open space in the Metropolitan area, except the Royal parks, and limits are imposed both as to extent and time of closure where the proposed user of the closed part is for an entertainment or a philanthropic or charitable purpose. The Bill contemplates the farming out of these powers and their exercise by the persons contracting with the authority. The Chairman of the London County Council Parks Committee, in a letter written in reply to the foregoing, urged that the Bill is of a consolidating character and provides for the exercise by the London County Council of certain powers with regard to open spaces at present conferred only on Metropolitan boroughs and, conversely, for the exercise by the latter of certain powers at present vested only in the former. The desirability of such consolidation is emphasised, and it is pointed out that under the Local Government Act, 1929, the management, control and supervision of open spaces vested in the London County Council may be transferred to the Metropolitan boroughs and has been so transferred in a number of cases. Existing powers with regard to setting aside portions of such areas for games, etc., are alluded to, and it is suggested that complete unanimity exists between the London County and Metropolitan borough councils in promotion of legislation to facilitate further the utilisation of the open spaces of London in the best interests of the public. The existence of such unanimity is denied by the first writer, who also asserts that the Bill contemplates the vesting of new and more extensive powers (above referred to) in the local authorities. Another writer, the Secretary of the Metropolitan Public Gardens Association, points out that the safeguarding legislation, which the open space societies have gradually built up by various public Acts of Parliament in order to preserve open spaces intact, is being seriously weakened by private Acts secured by local authorities—particularly by some wide-reaching power embodied in a General Powers Bill. The same writer suggests that it ought to be possible for Parliament to lay down rules that local and private Bills should not contain clauses having the effect of overriding and rendering null and void public Acts of a protective character. The amendment of a public Act should, it is urged, be effected only by another Act of the same character ensuring due publicity, such as is not afforded in procedure by private Bill.

The Tithe Commission.

RECENT evidence given before the Royal Commission on Tithe Rent-charge, sitting at Westminster under the Presidency of Sir JOHN FISCHER WILLIAMS, includes that tendered on behalf of the Oxford and Cambridge Colleges. Some of these colleges are both tithe payers and tithe owners, and at least in two cases the outgoings exceed the income. It is pointed out in the evidence submitted on behalf of Oxford that tithe is an important factor of the revenues of the colleges, and that any curtailment of tithe income would reduce the funds available for education. The Acts of 1915 and 1925 greatly benefited tithe payers at the expense of owners and at present tithe rent is only equal to about five per cent. of the total agricultural outgoings, and is, it was said, unlikely to be either an excessive burden or a serious factor in agricultural depression. Steps could be taken to indemnify and help the minority of tithe payers genuinely in distress, but it was thought that there is no justification at present for any modification of the Act of 1925 whereby the general body of tithe payers obtained relief at the expense of the general body of tithe owners. It was recommended that the State should purchase from tithe owners all extant tithe rent-charge at its net value, so as to provide for its gradual and long-term redemption. The State should also accept responsibility for all rates now being paid on tithe rent, and should cancel land tax now assessed on tithe rent-charge. Evidence submitted on behalf of the Cambridge Colleges indicated that so large a proportion of their gross external revenue—particularly in the cases of Trinity and King's—was tithe rent-charge that any serious diminution in the annual amount received would imperil their capacity to maintain their present provision of fellowships and scholarships " for the furtherance of education, religion, learning and research." In general, the Tithe Act, 1925, worked reasonably well and the collection of tithe did not present undue difficulties if attention were given to special circumstances. The most satisfactory settlement of the tithe question would, it was thought, be the abolition of tithe rent-charge by an immediate State purchase, and the substitution for it of a land rent-charge collected by the Inland Revenue, the tithe owner receiving cash or an issue of marketable securities guaranteed by the State if such a purchase could be arranged on equitable terms. Lord MALMSBURY, who gave evidence as a lay tithe owner, favoured redemption on what he described as a thoroughly sound and equitable basis, but thought that any redemption scheme based on a value below the actual value of tithe now would be most unfair to tithe owners. The Government should take over the tithe as a government charge on the land. Mr. H. B. VAISEY, who gave evidence on the 21st March, intimated that he was reasonably satisfied with the present condition of things. The Act of 1925 was intended to have some finality about it but it had not yet been given a chance to show whether it would work or not. That opportunity should be accorded. Mr. VAISEY was in favour of facilitating tithe redemption in every possible way on fair terms. He represented the views of the Churchmen's Defence Union.

Road Matters.

The Times recently announced that 1st June is regarded in official circles as the appropriate time for bringing into operation the regulation requiring all drivers who have obtained driving licences for the first time since 1st April, 1934, to undergo a driving test, although no date has yet been fixed. Besides the requisite standard of ability to handle a car, examinees will have to show a knowledge of the Highway Code. The projected distribution of a copy of a revised edition of the code to all householders will be generally approved. Ignorance of its provisions is not uncommon even in the case of an expert driver, and the elimination of some road signals is clearly unknown to a large portion of the motoring public. It was recently announced that the distribution of some 15,000,000 copies will begin after Parliament has approved of the provisions of the new issue. The distribution is expected to be spread over a fortnight. The new code is to be presented to Parliament immediately after the recess. The proposed sending of the code to motorists and non-motorists alike is a welcome recognition of the fact that knowledge of its contents is universally desirable. It was found necessary recently to issue a statement from Scotland Yard to counteract an erroneous impression that a speed up to 35 miles an hour in built-up areas might be indulged in without danger of prosecution. No change, it is asserted, has been made in the strict orders issued relating to the enforcement of the limit. "Where, however, a vehicle is timed by the speedometer of a police car following it, occasional difficulty may be experienced in maintaining an even distance between the two vehicles, and patrols are therefore instructed to show a certain margin in such cases." This direction has been in force since 1931 in dealing with speed limit cases. No margin is to be allowed when a car overtakes a police car travelling at the legal limit or when the limit is exceeded over a distance where a trap is in operation. A written reply to a Parliamentary question lately received by Lord Cottenham discloses the fact that during the past three years traffic patrol vehicles have been involved in about 840 accidents during a total driving mileage of about 11,000,000. It is, however, pointed out that every accident is reported, although it may be of quite a trivial nature—such as a bent wing. While a very large proportion of the accidents did not necessitate the cars being withdrawn from duty, a few were more serious and two were fatal.

Ribbon Development: Prospect of Legislation.

It is to be hoped that the motion agreed to in the House of Lords recently will lead to effective measures being taken at an early date to deal with the ever-growing menace of ribbon development. The motion, in its amended form, was "that in the opinion of this House it is essential that the protection against ribbon development in rural areas given by the forthcoming Bill should include within its scope the greatest possible number of roads and that the necessary legislation be introduced this session." The Earl of Munster, replying for the Government, referred to the building line and the improvement line laid down by the Road Improvement and Public Health Acts of 1925, and pointed out that only some 2,500 miles of road out of a total of 177,000 have so far been prescribed thereunder. Reference was also made to the Town and Country Planning Act, 1932, and to a number of Acts under which powers had been obtained by various counties to check the evil. But the Government was well aware that a further Bill was necessary if the whole country was to act in uniformity. Difficulties, such as the avoidance of hampering the proper development of land, the provision of proper compensation, the perfecting of the requisite machinery for the working of such a measure, were alluded to, and it was intimated that, although it was hoped very shortly to introduce a measure dealing with the subject simply, effectively and speedily and with due regard to the many interests involved, a date could not be given. Asked for an undertaking that the Bill would be introduced this session, the Earl of Munster replied that it was hoped to introduce it at a very early date, beyond that he could not go.

Goods Vehicles: Statutory Records.

The new Regulations relating to the records required to be kept by holders of "A," "B" and "C" licences under the Road and Rail Traffic Act, 1933, will come into force on 29th April. Reference was made in our issue of 30th March to the principal alterations introduced by these, the Goods Vehicles (Keeping of Records) Regulations, 1935, and the concessions embodied therein need not be repeated. An explanatory memorandum (G.3/9, as revised, April, 1935) is obtainable free of charge from any traffic area licensing authority. The Regulations are published by the Stationery Office, price 3d.

"London Transport": A Public Authority.

The attention of practitioners should be drawn to the recent decision at Ilford County Court, where Judge Beazley held that the London Passenger Transport Board was a public authority, and, consequently, in a position to plead the Public Authorities Protection Act, 1893. The learned county court judge observed that the Board was stated to be a public authority in the London Passenger Transport Act, 1933. The Board, in his view, was not trading for profit but was carrying on its business for the public benefit. His Honour expressed himself as unable to see any distinction between the Board's position and that of the Metropolitan Water Board, which had been held to be a public authority. The case arose out of injuries sustained by the plaintiff as a result—as it was held—of the negligence of one of the Board's servants, but, since proceedings had not been started within six months of the accident, the action for damages failed. We are indebted to *The Times* of 16th April for the information from which the foregoing has been prepared.

Recent Decisions.

The Court of Appeal upheld the decision of Eve, J., in *Re Walker's Settlement; Royal Exchange Assurance* v. *Walker and Others* (*The Times*, 17th April). The original decision was referred to in this column in our issue for 16th March and reported in 79 Sol. J. 187. The case raised the question of what constituted a company amalgamation within the meaning of sub-s. (3), para. (*c*), of s. 10 of the Trustee Act, 1925, and it was held that proposed transactions, which need not be here repeated, were not within the aforesaid provisions.

Several questions relating to rating were decided by the Railway and Canal Commission in *Re Railways* (*Valuation for Rating*) *Act*, 1930, *and Re Part of the First Valuation Roll Relating to the Southern Railway Co. as Completed by the Railway Assessment Committee* (*The Times*, 16th April), where questions arose relating to the inclusion or exclusion of certain subjects in or from the railway assessment roll. It was held that premises including a bank, kiosks for the sale of various articles, bookstalls, toilet saloons, offices, rented out at Victoria Station, were in the occupation of the railway company and should not be separately assessed; that certain offices at Waterloo, London Bridge and Southampton were quite distinct from any purpose of the station as a railway station and were assessable accordingly, and that high-tension electric cables and electric sub-stations were "hereditaments consisting of land used only as a railway." It was not disputed that these were "hereditaments" or that they were "hereditaments consisting of land." In arriving at the decision indicated, the reasoning of the House of Lords in *Lancashire and Yorkshire Railway Co.* v. *Liverpool Corporation* [1915] A.C. 152, was applied. Readers are referred to the report for a proper understanding of the case. It is not possible to do justice here to the many important points raised, but a verbatim report of the judgment will appear in this week's and next week's issues of *Rating and Income Tax*.

Estate Duty on Policies of Assurance for benefit of Donees or Nominees.

It is the purpose of this article to consider some points regarding the incidence of estate duty payable in respect of policies of assurance on the life of the deceased which had been effected by him for the benefit of other persons.

In the first place it may be observed that for long it was (and perhaps still is) a common practice for a man or woman to effect a policy under the M.W.P.A., 1882, s. 11, for the benefit of his or her wife or husband and children, with a view to the reduction or avoidance altogether of estate duty on his or her death. That section is a familiar one, and it is not necessary to do more than remind the reader that the effect of it is that such policy creates an immediate trust in favour of the wife or husband or children, or both, and that it is free from the debts of the assured, except that where it is shown that it was effected and the premiums were paid with intent to defraud the creditors of the assured they shall be entitled to receive out of the money payable under the policy a sum equal to the premiums so paid. Where such a policy was taken out or a policy was effected in the assured's name and voluntarily transferred to another it was, until comparatively recently, generally assumed that if the assured lived for more than three years after the policy was effected or transferred no estate duty would be payable on the death of the assured, at any rate where the policy was a single premium one and the premium was paid when the policy was effected. In such a case it seems to have been considered that the policy was a gift to the person nominated in it and so, if the assured lived for three years, no duty would be payable. In the sixth edition of "Dymond on Death Duties," it is stated (p. 88): "No estate duty is, however, claimed by the Revenue where the deceased has made an absolute gift of a fully paid policy on his life more than three years before his death." That statement is omitted in the seventh edition, and it seems that the practice of the Revenue has changed in that respect.

It is thought that the more recent practice is justified by s. 2 (1) (*d*) of the F.A., 1892, under which estate duty is payable on—

> "Any annuity or other interest purchased or provided by the deceased either by himself alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising on the death of the deceased."

It has been held that "other interest" includes policy moneys (*Attorney-General* v. *Dobree* [1900] 1 Q.B. 442). Consequently a policy which is effected by the deceased for the benefit of a nominee, or for his own benefit, and transferred to a donee, and a single premium or all the premiums are paid by the deceased, estate duty is payable on the death of the deceased on the policy money as being an interest "purchased or provided by the deceased."

If, however, the deceased had effected a policy for his own benefit and paid some of the premiums and transferred it to a donee who thereafter paid the premiums, no duty would be payable if the assured lived for more than three years after the transfer. In such a case the policy would not have been "purchased or provided" (that is wholly "purchased or provided") by the deceased.

It is believed that the practice now prevailing is to endeavour to effect a policy provided by the deceased in such a way as to render the policy an "estate by itself," and so escape aggregation with other property passing on the death of the assured, thereby reducing the rate of duty payable, although not evading it altogether.

Attempts of that kind are made in reliance upon the proviso to s. 4 of the F.A., 1924, which (as amended by the F.A., 1900), enacts:—

> "For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form one estate and the duty shall be levied at the proper graduated rate on the principal value thereof:
>
> "Provided that any property so passing, in which the deceased never had an interest, shall not be aggregated with any other property, but shall be an estate by itself and the estate duty shall be levied at the proper graduated rate on the principal value thereof."

In order to avoid aggregation under this section it is essential that a policy effected by the deceased must never have belonged to him and that he must never have had any interest in it. It follows that a policy which in the first place is effected by the assured and transferred to a donee does not come within the proviso of the section. It is possible also that policies effected under the Married Women's Property Act may not escape aggregation.

In the first place it is necessary in order to bring a policy within the proviso to take care that the assured has no original interest in it. Thus, if a policy is taken out for the benefit of the wife of the assured for life and after the death for children who attain twenty-one and for the assured in default of any child attaining that age, and no child lives to attain a vested interest, then the assured has an original interest in the policy and aggregation is not avoided.

In *Attorney-General* v. *Pearson* [1924] 2 K.B. 375, policies of assurance were settled by the assured on his marriage upon trust for his wife for life and after her death for the children of the marriage as the assured and his wife or the survivor should appoint, and in default of appointment for all the children who should attain twenty-one or being daughters marry under that age, and in default of any child or children who should attain a vested interest in trust for the settlor. Rowlatt, J., held that the assured had an interest in the policies contingently upon the failure of the trusts of the settlement in favour of the wife and children, and consequently the proviso to s. 4 did not exempt the policy moneys from aggregation.

Although the assured may not have an original interest in the policy he may acquire an interest in it before his death. That would arise if the policy were effected for the benefit of the wife and children who were of full age at the time and one of those persons having a vested interest died bequeathing his or her interest to the assured. In that case also the proviso to s. 4 would not apply.

A more difficult question would arise if a person entitled to the policy died intestate and the assured became entitled to a share in his estate. The question would then be whether the assured had an "interest" in the policy within the meaning of the section.

It is true that in those circumstances the assured would not, strictly speaking, have acquired any interest in the policy itself, he could not be said to have become entitled to that specific asset of the intestate, but only to a share in the estate of which the policy formed part. That appears from the decision in *Re Vanneck* v. *Benham* [1917] 1 Ch. 60, where a person was entitled to a one-sixth share in the estate of his brother, who had died intestate, and it was held that his "only right at the moment of his brother's death was to have the administration of the estate carried out, the estate ascertained and realised wholly or so far as was necessary, and then, subject to payment of debts and administration expenses, to have paid to him one-sixth of the net proceeds, with no right of property to claim any part of the property in specie prior to realisation."

In one sense, therefore, it may be said that in such a case the deceased never had an interest in the policy, but it is doubtful whether it would not be held that he had an interest within the meaning of the proviso to s. 4.

It would, however, be different, it is thought, if the deceased had become entitled to the whole of the estate of the intestate, for, in that event, the deceased would have the right to the policy in specie.

It seems to follow from what has been said that until the death of the deceased it can never be known whether the policy money will be aggregable or not, and if it were desired to sell the policy or mortgage it during his lifetime, a purchaser or mortgagee would not know upon what basis, as to estate duty, to calculate the value. What rate of duty to allow for could be a mere matter of speculation and not capable of being ascertained.

Some of the important matters which the draftsman should consider have been indicated. It is not suggested that the whole ground has been covered, but it is hoped that this article may be helpful and direct attention to the principal factors to be borne in mind when advising a client who desires to effect a policy which on his death either will not be liable for estate duty at all or at least will not be aggregable, for the purpose of ascertaining the rate of duty payable, with the other property passing on his death.

Withdrawals of Prosecutions.

EVERY practitioner in the Criminal Courts knows that there are many reasons, some good, some bad, and some indifferent, why a prosecutor, having decided to commence proceedings, subsequently changes his mind and decides to withdraw from the case. Magistrates are very properly reluctant to allow a prosecutor to take the law into his own hands in this way, and generally require a thorough explanation before consenting to a withdrawal of a prosecution.

In an interesting case which recently came before the Marylebone Magistrate, Mr. Harold McKenna, an application was made for the withdrawal of a summons for assault. The complainant was a private inquiry agent and he had made a statement to his solicitors alleging two or more assaults on him. Adjournments had been granted on the ground that the defendant was out of the country, and later the complainant informed his solicitors that he had been given a substantial sum of money in consideration of which he had to sign a letter to the court indicating his wish to withdraw the proceedings. He also signed another letter to this effect to his solicitor, enclosing a sum for costs. The solicitor for the prosecution wished to make it clear that he never applied for a summons of criminal proceedings and then settled them behind the back of the court. The learned magistrate then refused to sanction a withdrawal, and fixed the hearing for the following day.

On the next day, counsel for the complainant said that there were no circumstances of aggravation and no damage to the complainant, and the parties had met and composed their differences. He was instructed that the complainant, who was present, refused to continue with the case.

In marking the register "Dismissed for want of a complainant," the learned magistrate said that it was obvious that there was no power to compel the complainant to go into the witness box. He added that the case disclosed a state of things which caused him some anxiety, as if these arrangements were made behind the back of the court it might mean that a rich defendant was able to buy off criminal proceedings against him by making a handsome compromise in the meanwhile. It would also open the way to a species of blackmail. He had, however, no reason to believe that the particular transaction involved was other than perfectly proper.

The dangers of arrangements such as these are obvious, and the law as to withdrawals by prosecutors has never been in doubt. The clear statement by Sir Francis Jeune in *Pickavance* v. *Pickavance* [1900] P. 60 has always been a leading authority on the point: "It is to be remembered," he said, "as a very important element in these cases, that the withdrawal of a summons can only take place by leave of the justices or magistrate. . . The court, having once given its consent to a withdrawal, cannot be competent to revive it again by issuing a fresh summons on the same ground." This was later qualified in *Davis* v. *Morton* [1913] 2 K.B. 479, where a court consisting of Ridley, J., Pickford, J., and Avory, J., decided that "where the withdrawal of a summons has not been on the merits of the case but upon a preliminary point, the withdrawal is not equivalent to a dismissal or acquittal."

The effect of a withdrawal without the court's consent on payment to the prosecutor of compensation was dealt with in *Ex parte, Bryant*, 27 J.P. 277. After a summons had been taken out for a common assault, one sovereign was paid by the defendant to the prosecutor, and on the return day neither party appeared. The justices, although told that the case had been settled, issued a warrant to arrest the applicant. He was arrested and was refused bail. The complainant was present at the hearing and answered a few questions, but did not press the case. The defendant was convicted and later moved for a rule *nisi* for a certiorari to bring up the conviction to be quashed. The court held that nothing had been shown to take away the jurisdiction. There is thus no objection against taking out a second summons on the same facts where the magistrate does not consent to a withdrawal of the first summons and does not go into the merits of the case owing to the complainant's refusal to give evidence.

The consent of the court to a withdrawal of the prosecution does not legalise any agreement made prior to and in consideration of the withdrawal. Such agreements are clearly illegal in English law and will not be enforced even when sanctioned by the court—*Windhill Local Board* v. *Vint*, 45 Ch. D. 351. It is obviously undesirable for any court to countenance such agreements and magistrates and judges rightly emphasise, on occasions when their consent to a withdrawal is requested, that once a summons has been issued the matter is not a private dispute which concerns only a few individuals, but a criminal proceeding in which the State has a major interest.

Payment into Court.

A FURTHER ANOMALY.

A CURIOUS state of the High Court rules was disclosed recently at a certain assizes.

A, the plaintiff, was injured as the result of an accident and sued B. Five days before the day on which the case came into the list for hearing B paid £150 into court. On attendance at the Assize Court of the parties, their counsel, solicitors, expert witnesses, etc., the question arose as to A's position with regard to the taking out of the money.

By Ord. XXII, r. 1 (1), "In any action for a debt or damages or in an Admiralty action the defendant may at any time upon notice to the plaintiff pay into court a sum of money in satisfaction of the claim or (where several causes of action are joined in one action) in satisfaction of one or more of the causes of action."

And by Ord. XXII, r. 4 (2), "if the plaintiff elects within seven days after receipt of notice of payment into court to accept the sum or sums paid into court, he shall give notice as in Form 4 in Appendix B to each defendant."

From the wording of the latter rule, it seems that the defendant has seven days in which to make up his mind whether he will apply to take the money out of court or leave it and go on with his action. If he applies to the court to take the money out, of course no difficulty arises, for by Ord. XXII, r. 4 (3), "Thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall be stayed, and the money shall not be paid out except in pursuance of an order of the court or a judge dealing with the whole costs of the action or cause or causes of action (as the case may be)."

But supposing, as was the case in the circumstances set out above, A stands out for his rights to have the benefit of the whole seven days to consider the matter ?

By Ord. XXII, r. 6, " Except in an action to which a defence of tender before action is pleaded or in which a plea under the Libel Acts, 1843 and 1845, has been filed, no statement of the fact that this money has been paid into court under the preceding Rules of this Order shall be inserted in the pleadings, and no communication of that fact shall at the trial of any action be made to the judge or jury until all questions of liability and amount of debt or damages have been decided, but the judge shall, in exercising his discretion as to costs, take into account both the fact that money has been paid into court and the amount of such payment."

How is A to get an adjournment for a further two days in order to consider his position without disclosing to the judge that there had in fact been a payment into court ? It is unlikely that a judge would grant an adjournment except for a very good reason, and if A gets no adjournment the action is called on.

Suppose A were to lose his action. Is it likely that an application by A at the end of the hearing to have the money in court paid out to him would be successful ? The grounds of the application, of course, would be that the full time given to A to consider the matter has not yet elapsed. It seems unlikely, to say the least of it, that such an application would succeed, but the rules are silent on the point. Let us hope that the omission will soon be rectified.

Company Law and Practice.

The Improper Application of a Company's Funds.

I THINK that perhaps the most useful vantage-point from which we can consider this topic is that of a director who finds himself in the position of having sanctioned a payment out of the funds of his company, and this payment, for certain reasons, turns out to have been one which should not have been made.

The first case that comes to mind is one which, before the decision in *Trevor v. Whitworth*, 12 A.C. 409, possessed some importance in the vexed question of a purchase by a company of its own shares ; I am referring to *Land Credit Company of Ireland Limited* v. *Lord Fermoy* (1869), L.R. 8, Eq. 7. The facts there were as follows : The directors of the company were empowered by the articles " to buy, sell or loan on all descriptions of shares, including shares issued by the company (not being speculative transactions for the rise and fall of shares)," and also " to invest on such securities or investments as the board might think proper." While the company was being formed, certain of its shares were purchased on behalf of the company at a premium, the cheques for payment of which were signed by two of the directors and sanctioned, after payment, at a meeting of the board. Some of the directors present stated that they were not aware of the nature of the transaction until afterwards. The official liquidator filed a bill to make the directors liable for the amount, being £3,739, and it was held, first, that the purchase of the shares was unauthorised by the articles, and, secondly, that all the directors who were present when the cheques were sanctioned, or who signed the cheques, were jointly and severally liable. As regards the directors' liability, the reasoning which induced the court to decide as it did appears clearly from a passage in the judgment of Lord Romilly, M.R., at p. 11, after he had observed that *primâ facie* the directors present at the meeting were liable for having sanctioned the payment : " If a director could justify himself for sanctioning an improper payment by asserting ignorance of the purposes for which the money was meant to be applied, no director would ever be liable for the most flagrant abuse of the trust funds confided to his care, as he would always take care to be uninformed of the purpose for which the money was required. But the answer is, that it is his duty to learn how the money is intended to be applied which is voted at a board when he is present ; that it is for this purpose that the office of director is created, and that he has been elected by the shareholders. A plea of ignorance by a director, or that anything was done by him for the sake of conformity, is merely a plea of guilty, and it is an admission of liability to account for the sums misapplied. The same excuse might be alleged if the greater part of the funds of the company were, by one-half of the directors present, confided to the other half, and if they thereupon distributed the money amongst themselves and retired out of the jurisdiction of this court."

These emphatic remarks of Lord Romilly are confirmed by the decision in *Re Railway and General Light Improvement Company : Marzetti's Case* (1880), 42 L.T. 206, where a director of the company was present and voted at a meeting where a payment was made for preliminary expenses, the payment being, in fact, for expenses incurred in fraudulently raising the price of the company's shares in the market. He made no inquiry as to what the payment was for, and it was included in an item which appeared in the annual balance sheets and passed unquestioned. The court held him liable to repay the amount of the payment, holding also that the company had not ratified the transaction.

But a director is not liable for misfeasances committed by his co-directors without his knowledge at board meetings at which he is not present ; nor is he liable to make good the amount of a cheque, drawn with his sanction for a lawful purpose, which gets into the hands of the wrong person and the proceeds of which are misappropriated : *Re Montrotier Asphalte Company : Perry's Case* (1876), 34 L.T. 716. The Vice-Chancellor, having remarked that Mr. Perry, having become a director, was liable for all he did as a director but was not bound to attend every meeting of the directors, went on to say that " it is not part of the duty of a director to take part in every transaction which is conducted at a board meeting. His business or his pleasure may call him elsewhere, and it would be a most unheard of thing to say that if anything wrong was done at a board meeting, he being named among the directors but not present, he is liable for what is done in his absence."

This question of directors' liability in the matter of signing cheques, and their duties generally, received ample consideration in the monumental case of *In re City Equitable Fire Insurance Company Limited* [1925] 1 Ch. 407. The facts there are extremely complicated and I think we should do best to confine ourselves, so far as possible, to the principles which emerge. First of all, a director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming of course that the cheque comes before him for signature in the regular way, having regard to the usual practice of the company. A director must of necessity trust to the officials of the company to perform properly and honestly the duties allocated to them. But before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board (as the case may be), authorising the signature of the cheque ; and where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature. The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee and the amount of each, should be read out at the board or committee meeting and subsequently transcribed into the minutes of the meeting.

It is not usual for the court to define the steps to be taken by business men in managing their affairs, for as Lord

Macnaghten expressed himself in *Dovey* v. *Corey* [1901 A.C]. 477, at p. 488: "I do not think it desirable for any tribunal to do that which Parliament has abstained from doing—that is, to formulate precise rules for the guidance or embarrassment of business men in the conduct of business affairs. There never has been, and I think there never will be, much difficulty in dealing with any particular case on its own facts and circumstances; and, speaking for myself, I rather doubt the wisdom of attempting to do more." In spite of this opinion, I do not think it would be strongly argued that the principles for directors signing cheques which Romer, J., enunciated in the *City Equitable Case* are undesirable.

Joint Stock Discount Company Limited v. *Brown*, L.R. 8 Eq. 381, fell to be considered by Romer, J., in the *City Equitable Case*; the facts, summarised, were that directors had expended money of their company in payment for certain shares which the company had no power to acquire. One of the directors by the name of Bravo only joined the board after the transaction had been resolved upon by the board, but he had subsequently signed a cheque for £5,000, being part of the moneys in question. In holding him liable, James, V.-C., after pointing out that Bravo was not a party to the original resolution, but that he had signed the cheque, dealt with Bravo's contention that he signed the cheque as a matter of form, and said: "It has been repeated . . . that signing cheques in that way is a mere ministerial act . . . A company for its own protection against the misapplication of its funds requires that cheques should be signed by certain persons. Of course it is quite clear that no company of this kind could be carried on if every director were obliged to sign every cheque, and it is therefore required that the cheque should be signed by a certain number of persons for the safety of the company. That implies, of course, that every one of those persons takes care to inform himself, or if he does not take care to inform himself is willing to take the risk of not doing so, of the purpose for which and the authority under which the cheque is signed; and I cannot allow it to be said for a moment that a man signing a cheque can say: 'I signed that cheque as a mere matter of form, the secretary brought it to me; a director signed it before me; two clerks have countersigned it; I merely put my name to it.' Most of us have been obliged to trust in the course of our lives to a great number of persons when we have had to sign deeds and things of that kind; but if we trust, of course, we must take the consequences of our so trusting." Romer, J., distinguished this case of *Joint Stock Discount Company Limited* v. *Brown* on the ground that if the director had inquired as to the purpose for which the cheque was required, he would have ascertained that it was for a purpose which he must have known or be deemed to know was *ultra vires*. Furthermore, it would appear, in view of the *City Equitable Case*, it is sometimes open to a director to say that he signed a cheque as a purely ministerial act.

The duty of a director, who knows that a proposed transaction is improper, was considered at some length in *Joint Stock Discount Company Limited* v. *Brown*, *supra*, by James, V.-C., pp. 401-404, and it is quite clear that merely to protest is insufficient to relieve him from the liability (if any) of his co-directors who took more active shares in the affair. The court presumed that Mr. Brown, the director in question, had knowledge of the *ultra vires* speculation, and the evidence showed that, though he knew the moneys of the company were placed in such a way that the signatures of two persons, the managing or the pro-managing director, and one director, were sufficient to take them out of the coffers of the company, and that some of the directors were proceeding to carry into effect the scheme which Mr. Brown had disapproved, yet he merely sent in a letter of protest which he allowed to be recorded on the minutes of the company, not in its true character, but as a letter with reference to the arrangement made with the Company, and gave not the slightest intimation to any other director or person that he disapproved of it. In view of these facts, the court was unable to discover any pretence whatever for releasing him from his share of the liability with the other directors. While in *Ramskill* v. *Edwards*, 31 Ch.D. 100, a director, who was present at a meeting at which a loan of £1,000 from the company's moneys upon an unauthorised security was granted, when he protested strongly against it, and who was present at a subsequent meeting at which the minutes of the first meeting were read and confirmed, and who then signed a cheque for £400 which was actually advanced and repaid, was held to have adopted, by his signing the cheque, the whole loan of £1,000, and that he was therefore liable to contribute in respect of a second £400 which was advanced and not repaid, the cheque for which this director had not signed. His answer that he had signed the cheque ministerially and that it would have been of no use for him to refuse to sign, for someone else would have done so, proved of no avail.

A Conveyancer's Diary.

Powers of Attorney by Trustee-Mortgagees.

I do not know whether much advantage has been taken of s. 25 of the T.A., 1925, which enables trustees being out of the United Kingdom to delegate their trusts during their absence subject to certain qualifications. A question arises under the provisions of that section which may not often occur in practice but is of interest to the conveyancer and should not be overlooked.

The case that I have in mind is where trustees have lent part of the trust funds on mortgage and, one of them being abroad, it is desired to deal with the mortgaged property. Where the absent trustee gives a power of attorney under the power conferred by the section, what inquiries should a purchaser from the trustees who is relying upon the power make, and upon what points should he insist upon being satisfied?

This may be an important matter, although it is not likely often to arise, because as a general rule a purchaser from trustee-mortgagees will not know that the mortgagees are trustees, but it may happen that a power of attorney is offered which discloses the fact. That will be so where the power is a general one applying not only to the particular mortgage debt and the security therefor, but to the trust generally. Of course, if the power of attorney refers only to the mortgage and purports to confer on the donee a power to deal with the mortgaged property, and there is nothing in the mortgage deed nor in the power of attorney to show that the mortgagees are trustees, a purchaser will not be concerned to inquire, nor indeed entitled to inquire whether in fact the advance was made out of trust money, and may assume (if the power is otherwise well given) that the attorney has the right to act upon it.

The section referred to, however, contemplates a power of attorney which will in terms confer upon the donee the power to act as a trustee in the absence of one of the trustees who is out of the United Kingdom. This is a new departure, and originated, no doubt, in the provisions made during the war by the Execution of Trusts (War Facilities) Acts.

The section enacts—

(1) A trustee intending to remain out of the United Kingdom for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from the United Kingdom of all or any trusts, powers and discretions vested in him as such trustee either alone or jointly with any other person or persons: Provided that a person being the only other co-trustee

and not being a trust corporation shall not be appointed to be an attorney under this sub-section.

Sub-section (2) provides that the donor of the power of attorney shall be liable for the acts and defaults of the donee.

Sub-section (3) enacts that "the power of attorney shall not come into operation unless and until the donor is out of the United Kingdom and shall be revoked by his return."

Sub-section (4) deals with the execution and filing in the Central Office of the power "with a statutory declaration by the donor that he intends to remain out of the United Kingdom for a period exceeding one month from the date of such declaration or from a date therein mentioned."

The only other sub-sections to which I need refer for my present purpose are (7) and (8).

Sub-section (7) reads :—

"The statutory declaration aforesaid" (i.e., that mentioned in sub-section (4)) "and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee."

Sub-section (8) gives full protection to any person dealing with the donee "notwithstanding that the power has not come into operation or has become revoked by the act of the donor or by his death or otherwise," unless such person had actual notice that the power had never come into operation or of the revocation of the power.

Before going further, it is necessary to look at that important (and sometimes overlooked) s. 69 (2) :—

"The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust and have effect subject to the terms of that instrument."

It seems, therefore, that where a power of attorney under s. 25 is profferred to a purchaser of mortgaged property the purchaser must see the trust instrument to ascertain whether the power given by that section is negatived. That at least he must do.

Then, I think, that the purchaser would be entitled to be satisfied that the donor was in fact a trustee duly appointed of the trust instrument. If the donor was not an original trustee, the purchaser must inspect his appointment and previous appointments (if any) and obtain evidence that such appointments were properly made.

In addition to that it seems that a purchaser ought to require proof that the money advanced was trust money arising under the trust instrument.

I do not know that a purchaser would be concerned to see whether or not there was a power to advance money on mortgage or whether the particular advance was a proper one as to the amount in relation to the value of the property and otherwise, but I think that he must be satisfied that the advance was in fact out of the trust moneys.

In effect, therefore, a purchaser from the trustee-mortgagees in such circumstances will have to call for an abstract of the trust instrument and any appointment of new trustees and, if the mortgage is not referred to in those documents, he would be obliged to ask for evidence that the money was advanced out of the funds to which they relate.

If the mortgagees are trustees of a settlement under the S.L.A. then it will be necessary for a purchaser to make such investigation as should be made by a purchaser of the settled land itself. So he would have to be furnished with an abstract of the settlement and the vesting instrument and be satisfied that the donor has been duly appointed a trustee.

All this appears to go beyond what was probably intended, but I think that a purchaser must have proof that the section applies to the particular mortgage and to the donor of the power.

I do not think that s. 113 of the L.P.A., 1925, is of any assistance. That section affords protection to those dealing with mortgagees and, in effect, provides that any person dealing in good faith with a mortgagee or a mortgagor if the mortgage has been discharged, released or postponed, shall not be concerned with any trust at any time affecting the mortgage money whether or not he has notice of the trust and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage, that (*a*) the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account ; and (*b*) that the mortgagee has or had power to give a good receipt for the purchase money or the mortgage money and to release or postpone the priority of the mortgage debt or to deal with the same or the mortgaged property, without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

That section does not affect the question which I have been considering. If the mortgagee or one of them purports to act through an attorney appointed under s. 25 of the T.A., the purchaser must investigate the right of the trustee to delegate his powers entailing an inquiry as to appointments of trustees and other matters which I have mentioned.

I ought, perhaps, not to leave this subject without a reference to *Green* v. *Whitehead* [1930] 1 Ch. 38.

In that case two persons were entitled absolutely and beneficially as joint tenants, and, by virtue of s. 36 of the L.P.A., 1925, became trustees holding on trust for sale, and they contracted to sell as such trustees. One of the joint owners gave a general power of attorney authorising the attorney to sell and convey any property belonging to the donor, whether solely or jointly, with any other person. The other joint tenant and the attorney tendered a conveyance executed by them. It was held by Eve, J., that the power of attorney amounted to a complete delegation of the trust created by operation of law, and that the vendors, having contracted to sell as statutory trustees, the delegation was invalid.

The Court of Appeal upheld the decision on the ground that, upon the true construction of the power of attorney, it did not confer any power on the attorney in respect of land held by the donor as trustee for sale.

The decision of Eve, J., has been criticised, and the Court of Appeal apparently expressed no opinion regarding the ground upon which it was based.

It will be observed that the power in that case was not given under s. 25 and the decision has no bearing upon powers given under that section.

Landlord and Tenant Notebook.

Charrington and Co. Ltd. v. *Simpson.*

When I discussed *Simpson* v. *Charrington & Co. Ltd.* [1931] 1 K.B. 64, C.A., in the "Notebook" of 16th December, 1933 (77 Sol. J. 879), I had not the advantage of a report setting out with sufficient detail the course of events in the county court. The case was one in which the tenant of premises, consisting of a shop with an "off-licence," claimed a new lease under L.T.A., 1927, s. 5, a claim automatically referred for report to a referee, under s. 21 (2) of the Act. At the time of writing, my materials showed that there was some important difference of opinion between the referee and the deputy judge, who had varied the report. But it was not till I saw the account given in the official Law Reports [1934] 1 K.B. 64, since recapitulated in the judgment of Lord Tomlin in *Charrington & Co. Ltd.* v. *Simpson* (1935), 51 T.L.R. 270, H.L., that I was able to appreciate that the deputy judge had taken the unusual course of reviewing the referee's findings of fact, holding, for instance, that the referee had not only ignored certain relevant factors (as it were,

a misdirection in law), but also that he had not attached sufficient weight to the evidence of two of the defendants' witnesses. Weight of evidence is, of course, a question of fact; and while there is no analogy between a trial by county court judge and referee (under s. 6 of the County Courts Act, 1919 —now s. 90 of the County Courts Act, 1934), and a trial by judge and jury, a reversal based on a different conclusion, drawn from a shorthand note, is unusual enough to require special mention.

The case had, indeed, a chequered career. Two questions of interpretation had to be decided by the various tribunals which successively adjudicated the issue. One was the effect of s. 4 (1) (*c*) by which the Act provides: "in the case of licensed premises the sum . . . shall not include any addition to the value of the premises attributable to the fact that the premises are licensed premises." The deputy judge held that this excluded tenants of such premises, who carried on no other business, from the benefits conferred in respect of attached goodwill. On this he was upheld by the Divisional Court, but reversed by the Court of Appeal, who pointed out that the sub-section was merely declaratory (77 Sol. J. 812), and the House of Lords have now approved this part of the judgment of the Court of Appeal.

The other point is of more general importance. But, while the Lords have now reversed the Court of Appeal (who had reversed the county court deputy judge, who had rejected the referee's report), the final decision really contains no new law, as the Court of Appeal itself had, in the meantime, reconsidered its view of this point in another case. The question was the nature and scope of goodwill entitling tenants to compensation and arose in this way.

The original findings of the referee included these two: that the tenant had attached a valuable goodwill to the premises which would enable the landlords to let them at a higher rent than otherwise; and that by his business methods (including advertising) and the special skill displayed he attached more goodwill than would an average tenant. The findings of the deputy judge were that while a substantial part of the increase in letting value was due to the tenant's energy, the following outside factors were its main cause: the position of the premises, a shop at the corner of the Old Kent-road (a thoroughfare which had itself improved from the business point of view) and a road which was the only means of access to a new residential district inhabited by members of the working class; a swing-over in the public taste from draught to bottled beers, which commenced in 1910; the absence of the loss formerly occasioned by the "long pull"; and other "outside factors." He found that there was no tangible improvement due to the trading by the plaintiff, and interpreted s. 4 (1), proviso (*a*), as meaning that no compensation was payable in respect of attached goodwill which did not result from the tenant's trading on the premises. It is this interpretation which the House of Lords has now finally approved.

What happened in the Court of Appeal (the Divisional Court did not deal with this point) was that that tribunal took the view that the position of a tenant claiming statutory compensation was entirely on all fours with that of a tenant assigning a lease. Goodwill due to extraneous and adventitious circumstances would in such a case be a factor in arriving at the price, and the late Lord Justice Scrutton, in particular, drew in emphatic terms an analogy between the two positions. This view has now been condemned by the House of Lords; but the reason why I say that their pronouncement is not new authority is that the Court of Appeal had itself recanted, in *Whiteman Smith Motor Co. Ltd.* v. *Chaplin* (1934), 150 L.T. 354, C.A., Scrutton, L.J., himself pointing out that his former judgment was too wide. So the decision, if a reversal of the judgment with which it was dealing, is an approval of another decision of the same tribunal.

Lastly, mention was made, in the House of Lords, of the question of special exertions. The deputy judge had mentioned in several passages the finding of the referee stated above, that the tenant had done more than an average tenant to work up the business. These passages the Court of Appeal construed as a statement of principle, and the Lords have now declared them to be merely one of fact. The Court of Appeal, as it were, jumped on a snake that wasn't there; but the House of Lords agreed that if it had been there, the jumping would have been justified.

Our County Court Letter.

THE CONTRACTS OF CINEMA MANAGERS.

In the recent case of *Williams* v. *Astoria Cinema (Hull), Ltd.*, at Hull County Court, the claim was for damages for wrongful dismissal. The defence was that, under the terms of the service agreement, the company might terminate the contract, if in the opinion of the directors the plaintiff became unfit to act as manager through misconduct, gross negligence or otherwise, whereupon they might give him a week's notice. It was alleged that the plaintiff had improperly borrowed from the cashier, but the plaintiff denied any misconduct, and contended that he was the victim of spite and ill-will, as he had been instantly dismissed. His Honour Judge Sir Reginald Mitchell Banks, K.C., observed that the impression would arise that the plaintiff must have been guilty of flagrant misconduct, but the demeanour of two directors (in the witness-box) showed that they were actuated by ill-feeling towards the plaintiff. The latter appeared to be honest and competent, and, as his reputation and future were involved, he was entitled to judgment for £100 and costs. Judgment was given for the company on a counter-claim for £15.

EFFECT OF RENT ACT UPON HOUSING ACT.

In the recent case of *Brown and Another* v. *Pearson*, at Kendal County Court, the plaintiffs claimed possession of a dwelling-house at Milnthorpe, Westmorland, in respect of which the district council as the sanitary authority had served on the plaintiffs a notice under s. 19 of the Housing Act, 1930, upon the consideration of which the plaintiffs had agreed to give and the district council had agreed to accept an undertaking pursuant to s. 19 (2) of the Housing Act, that the dwelling-house should "not be used for human habitation" until the council, upon being satisfied that it had been rendered fit for that purpose, cancelled the undertaking. The dwelling was admitted to have been subject to the Rent Restriction Acts, but the plaintiffs relied on s. 21 (3) of the Housing Act, 1930, to overcome that protection, and, after serving the tenant with a month's notice to quit, commenced proceedings for possession. On the hearing it was contended on behalf of the defendant that the Rent &c. Restrictions (Amendment) Act, 1933, overruled, and in effect repealed, the provisions of s. 21 (3) of the Housing Act, 1930, it being argued that this is the effect of s. 3 of the 1933 Act, which provides that "No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply . . . shall be made or given unless the court considers it reasonable . . . and . . . (*a*) the court has power so to do under the provisions set out in the first schedule to this Act . . ." The First Schedule to the Act contains no reference to cases coming within s. 19 of the Housing Act, 1930. On behalf of the plaintiffs it was submitted that there had been no repeal of s. 21 (3) of the Housing Act, 1930, by the Rent &c. Restrictions (Amendment) Act, 1933, and amongst other cases *Parry* v. *Harding* [1925] 1 K.B. 111, was relied upon as establishing (in the words of Earl Selborne in *Seward* v. *Owner of the Vera Cruz* (1884), 10 App. Cas. 59, which case was there followed) that "where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are

not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention to do so." His Honour Judge Allsebrook gave judgment for the defendant, holding that the Rent Restrictions (Amendment) Act, 1933, had in effect repealed s. 21 (3) of the Housing Act, 1930.

Obituary.

SIR F. C. THOMSON, BART., K.C., M.P.

Sir Frederick Charles Thomson, Bt., K.C., M.P., Treasurer of the Household, died in Edinburgh on Saturday, 20th April, in his sixtieth year. He was educated at Edinburgh Academy, at University College, Oxford, and at Edinburgh University. He was called to the Scottish Bar in 1901 and the English Bar by the Inner Temple in 1904. He became Member of Parliament for South Aberdeen in 1918, and in 1923 he was appointed a Junior Lord of the Treasury. He held that position until 1928, except for the period when he was Solicitor-General for Scotland, 1923–24, and in 1931 he became Treasurer of the Household. He was created a baronet in 1929.

MR. H. A. NEWBON.

Mr. Herbert Alexander Newbon, Barrister-at-Law, of King's Bench Walk, Temple, died on Monday, 22nd April, in a nursing home at Twickenham. Mr. Newbon was called to the Bar by the Inner Temple in 1890.

MR. H. F. BAWTREE.

Mr. Hugh Francis Bawtree, solicitor, of Witham, died at Wickham Bishops on Wednesday, 17th April, at the age of sixty-four. Mr. Bawtree, who was admitted a solicitor in 1900, was a partner in the firm of Messrs. Bawtree & Sons, of Witham. He was Clerk to the Commissioners of Taxes for the Witham Division, and also Clerk to the Visiting Justices under the Mental Deficiency and Lunacy Acts for the County of Essex.

MR. A. W. BULLOCK.

Mr. Alfred Webster Bullock, solicitor, of Macclesfield, died on Saturday, 13th April. Mr. Bullock, who was admitted a solicitor in 1876, was over 80 years of age. He was formerly a partner in the firm of Messrs. Hand, Bullock & Swindells, but for many years past he had been practising on his own account.

MR. C. H. G. KNOWLES.

Mr. Charles Henry Gough Knowles, solicitor, senior partner in the firm of Messrs. Knowles & Son, of Luton, died in a nursing home on Saturday, 6th April, at the age of seventy-five. Mr. Knowles, who was educated at Kingswood School, Bath, and Wesley College, Sheffield, was admitted a solicitor in 1883, and was the oldest practising solicitor in Luton. He was President of the Bedfordshire Law Society in 1933.

Reviews.

Archbold's Pleading, Evidence and Practice in Criminal Cases. Twenty-ninth Edition. 1934. By ROBERT ERNEST ROSS, of the Middle Temple, Barrister-at-Law, and THEOBALD RICHARD FITZWALTER BUTLER, of the Inner Temple, Barrister-at-Law, Midland Circuit. Demy 8vo. pp. cvi and (with Index) 1,622. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. £2 12s. 6d. net.

The twenty-ninth edition of "Archbold" has followed its predecessor at a shorter interval than usual. The reasons for this are plain from a glance at the Preface. The almost complete disappearance of the Grand Jury has necessitated considerable alterations in the first chapter, which deals with indictment generally, and throughout the book the forms of indictment have had to be altered. These alterations have been made with the thoroughness one would expect to find. The Table of Statutes shows that several Acts of importance have been passed since 1931. The one requiring most space is the Children and Young Persons Act, 1933, of which all the relevant sections are included, together with such decisions upon earlier enactments as are apposite. The Dangerous Drugs Act, 1932, is also of importance and is included, together with others, such as the Wheat Act, 1932, under which there has been at least one important prosecution. The law is stated as at the end of July, 1934, but the book has been made to justify its well-earned reputation as a completely up-to-date guide to practitioners by the inclusion in a separate Appendix of the relevant sections of the Road Traffic Act, 1934, together with short references to them in the text.

There have been, as usual, several important cases in the Court of Criminal Appeal, all of which find their place in the book. There is *R.* v. *Manley* [1933] 1 K.B. 529, the "public mischief" case, the note of which, it may be observed, deals with the offence on the footing of causing the police to waste their time, but does not refer to the rendering innocent persons liable to suspicion and arrest, an aspect of the matter which almost always appears in the indictment and which the court often rightly regards as the real "sting" of the crime. Then there is *R.* v. *Stringer* [1933] 1 K.B. 704, the case on the question of separate indictments for manslaughter and dangerous driving, though by the Road Traffic Act, 1934, a jury can now convict of dangerous driving on an indictment for manslaughter. On the question of comment on failure by the accused to disclose his defence before the trial there have been three cases since 1931: *R.* v. *Naylor* [1933] 1 K.B. 685, *R.* v. *Parker*, *ibid.*, 850, and *R.* v. *Littleboy*, 24 Cr. App. R. 192. Five judges finally decided that the words "twenty-three years of age or under" in s. 2 of the Criminal Law Amendment Act, 1922, applied to a man until he reached his twenty-fourth birthday: *R.* v. *Chapman* [1931] 2 K.B. 606. In *R.* v *Maxwell*, 24 Cr. App. R. 152, a House of Lords case, distinguished in *R.* v. *Waldman*, *ibid.*, 204, it was held that cross-examination as to previous acquittals was not allowed. Finally, *R.* v. *Hare*, 24 Cr. App. R. 108, decided that a woman can commit an indecent assault upon a male person. These cases show the importance of the new work to practitioners. With regard to the book as a whole, one may say that any substantial criticism of a book so well established is not only almost impertinent but is unjustified.

Books Received.

Literary Associations with the Middle Temple. By JOHN MAHAM GOVER. 1935. Demy 8vo. pp. 35. London: Sir Isaac Pitman & Sons, Ltd. 2s. net.

International Law in Peace and War. Part II—Conflicts between States. By AXEL MÖLLER, Dr. Juris. Translated by H. M. PRATT, of the Inner Temple, Barrister-at-Law. 1935. Royal 8vo. pp. xxxi and (with Index) 323. Copenhagen: Levin & Munksgaard; London: Stevens and Sons, Ltd.

Tax Cases. Vol. XIX.—Part I. 1935. London: H.M. Stationery Office. 1s. net.

"*The Important Rules of the Supreme Court introduced in* 1933." A lecture given to the Birmingham Junior Legal Club by THOS. S. HUMPHREYS. 1935. Obtainable from The Solicitors' Law Stationery Society, Ltd., London, Liverpool and Birmingham. 1s. net.

Wertheimer's Law Relating to Clubs. Fifth Edition, 1935. By MAXWELL TURNER, of the Inner Temple, Barrister-at-Law, and A. S. WILSON, of the Middle Temple, Barrister-at-Law. Demy 8vo. pp. xvi and (with Index) 236. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Peaceable Re-entry.

Q. 3154. A leased a lock-up shop to B for a short term of years. Rent is payable quarterly in advance. The lease contains a full power of re-entry in the event of rent being in arrear for twenty-one days, whether formally demanded or not. A quarter's rent, payable in advance, is nearly a full quarter in arrear and several demands have in fact been made for it. Business is still being carried on in the shop, but there is so little stock that a distress would not be worth while. B refuses to give up possession. Can A enter the shop (this can be done quite "peaceably") and then demand and resume possession? If the keys are not handed over peaceably, A would have the existing lock removed and a new one fixed. I assume that A would have to give B an appointment to remove his stock and tenant's fixtures. Is there any "snag" about this? "Redman," when referring to peaceable entry, says that "it is believed to be rare in practice." One never hears of it actually being done, but in this particular case it appears to be A's obvious and easiest remedy. B will, of course, be able to apply for relief if he takes appropriate steps.

A. A can enter the shop and demand possession, having the lease ready to produce to show the relevant clause to B. The propositions stated in the question are correct. The only pitfall in the proposed procedure is that the re-entry may easily be transformed from a peaceable to a forcible re-entry. In the event of the re-entry showing signs of coming under the latter description, the attempt should be abandoned. Proceedings should then be taken in court for recovery of possession.

Part-time Employment.

Q. 3155. A woman is employed as a domestic servant regularly from Monday to Saturday, inclusive, for two hours a day. The servant, who has a husband and family, does not live in the house of her employer.

(1) Is the above employer under any statutory liability to the above-mentioned servant for any accident arising out of or in the course of her employment?

(2) Is the servant insurable under the Unemployment Insurance Acts or the Health Insurance Acts?

We shall be glad to have a reply at your early convenience particularly and as fully as possible in regard to (1) as above.

A. (1) The servant is a "workman" within the meaning of the Workmen's Compensation Acts, and the employer is therefore under the usual statutory liability for any accident arising out of *and* (not " or ") in the course of her employment.

(2) The servant is insurable under the National Health Insurance Acts, but not under the Unemployment Insurance Acts, as the latter only apply to employees in a trade or business, i.e., not to domestic or menial servants.

Remuneration of Builder.

Q. 3156. I act for A, a builder, who entered into an agreement with B to build six dwelling-houses on B's land. The agreement specified a minimum sale value for the houses, provided for A's remuneration by B, and that B should furnish the building materials; then followed a clause that when the houses were sold, after deducting the remuneration paid by B to A, and all other payments which B had made in connection with the erection of the dwelling-houses, A should be entitled to half of the remaining balance of the purchase moneys. B has furnished A with an account of the expenses of the erection of the dwelling-houses, two of which have been sold at a figure substantially in excess of the specified minimum sale value, and has paid to A his share of the purchase money in respect of the two dwelling-houses sold. Without attempting to advertise the remaining dwelling-houses, and without consulting A, B has let these to various tenants. A is now desirous of treating B as the purchaser of the four unsold dwelling-houses and of claiming his share of the proceeds of sale under the agreement, on the assumption that the four dwelling-houses are the same value as the two already sold. Can this be done, and, if not, can A sue B for the same sum for damages for breach of contract in that B by letting four of the dwelling-houses has put it out of the power of himself or A to sell these dwelling-houses, and deprived A of what might otherwise have been his share in the proceeds of sale? Reference to any authorities would be appreciated.

A. As the agreement provided for A's remuneration by B, it seems that no partnership was constituted. The land remained the property of B, and A was apparently his employee. No undertaking or guarantee was expressed or implied that B would sell the houses in any event, and no time limit attaches to the operation of the agreement. If, therefore, all or any of the tenants should decide to buy their houses or house, A could claim his share of the proceeds of sale at any future date. There is no cause of action on the assumption that B has put it out of his power, or out of A's power, to sell the houses. The tenants can always be given notice, and—in the event of a third party desiring to purchase—the tenants may thereby be induced to buy, in order not to be ejected. No reported case appears to be in point, as the agreement between A and B was exceptional.

Restrictive Covenants—Registration—Priority Notice.

Q. 3157. We have been acting for a client who is accustomed to sell plots of land from time to time, restricting in the contract and the conveyance the user of the land to private dwelling-houses, one detached house only to be erected, covenant to fence, etc. We have previously ignored the words in s. 13 (2) of the Land Charges Act "*before the completion of the purchase*" and registered the restrictive covenants as a land charge, Class D, a few days *after* the completion of the purchase. Bearing in mind s. 4 of the Law of Property (Amendment) Act of 1926, do you consider that we are doing our duty to our client? We understand from several solicitors that it is the common practice to register after completion, and not to file form No. L.C.16, Priority Notice, but subsequently to complete Form L.C.4. Section 199 of Law of Property Act, 1925, seems somewhat ambiguous.

A. We are unable to say that our subscriber's procedure is entirely satisfactory, though we believe that it is not unusual. While a purchaser is *personally* liable under his restrictive covenants with his vendor, although such covenants are not registered as land charges, yet, if he sold or mortgaged and completed the transaction before registration was effected, his purchaser or mortgagee would not be bound. We have instanced the cases of a purchaser and a mortgagee, but the definition of "purchaser" contained in L.C.A., 1925, s. 20 (8), as modified in connection with land charges of Class D by s. 13 (2) of that Act must be borne in mind. An early mortgage after completion is a very probable transaction.

To-day and Yesterday.

LEGAL CALENDAR.

22 APRIL.—One spring day in 1803, Lieut.-Colonel Montgomery and Captain Macnamara, R.N., were riding in Hyde Park, each accompanied by his Newfoundland dog. The dogs fought and their masters quarrelled. That evening they met to fight on Primrose Hill, and the Colonel was shot dead. On the 22nd April, his opponent was tried at the Old Bailey. Lord Hood and Lord Nelson were among the witnesses, who gave evidence of his excellent character and distinguished naval career, and though Mr. Justice Heath directed the jury that on the prisoner's own admissions they must convict him of manslaughter, they acquitted him.

23 APRIL.—The sanguinary nature of the eighteenth century Old Bailey Sessions is sometimes a little exaggerated to judge by the fruits of the sittings which ended on the 23rd April, 1762: "One for highway robbery, one for sacrilege and one for a private robbery received sentence of death (the two first have been since transported): eighteen to be transported for seven years, one to be pilloried, two branded and four to be privately whipped." Transportation rather than the gallows was the great judicial weapon.

24 APRIL.—Shortly before the retirement of Lord Chancellor Blackburne, an address of appreciation was handed to him: "Sir,—The Bar of Ireland desire, while they bid you farewell on the occasion of your retirement from the bench, to express to you their feelings of respect and admiration for the great qualities which have distinguished you . . . You were in succession Master of the Rolls, Lord Chief Justice, Lord High Chancellor and Lord Justice of Appeal. . . . Your uniform courtesy and kindness will be long remembered by us all and you bear with you into retirement the sincere good wishes of every member of the Irish Bar. Signed for the Bar of Ireland in pursuance of a resolution unanimously adopted at a meeting in the Law Library, Four Courts, Dublin, April 24th, 1867, Robert D. Macready, Father of the Bar."

25 APRIL.—Mr. Justice Maule was the son of an Edmonton doctor. He was born on the 25th April, 1788. He was twenty-six before he was called to the Bar.

26 APRIL.—The pillory was sometimes equivalent to a death sentence, and in 1780, a coachman called Read, exposed at St. Margaret's Hill for unnatural practices, perished through the ill-treatment of the mob. A motion was made in the King's Bench to attach the Under-Sheriff of Surrey for neglect of his duty, but it was shown that the assistance of the constables of eleven parishes had been called in to prevent the mischief, and on the 26th April, the court discharged the rule *nisi*, holding that there had been no neglect on his part.

27 APRIL.—On the 27th April, 1794, there died, aged forty-seven, Sir William Jones, jurist, orientalist, Judge of the High Court of Calcutta, master of thirteen languages, and much more besides. "He was lying on his bed in a posture of meditation and the only symptom of remaining life was a small degree of motion in the heart which after a few seconds ceased. His bodily sufferings from the complacency of his features and the ease of his attitude could not have been severe, and his mind must have derived consolation from those sources where he had been in the habit of seeking it and where alone in our last moments it can ever be found."

28 APRIL.—Lord Macclesfield died at Sherburn on the 28th April, 1732, after seven years of retirement from public life. While he was Lord Chancellor, various financial scandals, including speculation with the money of the suitors, had come to light. He had been obliged to give up the Great Seal, and shortly afterwards he had been impeached for corruption and convicted, being fined £30,000, part of which, it is strange to note, the King paid out of his privy purse. In large measure, Lord Macclesfield suffered for the irregularities of his predecessors.

THE WEEK'S PERSONALITY.

Of all his contemporaries on the Bench, Mr. Justice Maule has left the most vivid memory behind him. "His asthmatic cough was the most interesting and amusing cough I ever heard, especially when he was saying anything more than usually humorous, which was not infrequently. He was a man of great wit, sound sense and curious humour such as I never heard in any other man. He possessed, too, a particularly keen apprehension. To those who had any real ability he was the most pleasant of judges, but he had little love for mediocrities. No man was ever endowed with a greater abhorrence of hyprocrisy." Thus Mr. Justice Hawkins estimated his character, adding: "I learnt a great deal in watching him and noting his observations." His characteristic style was well illustrated in a case in which a religious hypocrite was faced with overwhelming evidence of a crime of violence against a woman. At the end of his summing up, in answer to a reminder from the prisoner's counsel, he said to the jury: "Gentlemen, I am requested to draw your attention to the prisoner's character which has been spoken to by gentlemen, I doubt not, of the greatest respectability and veracity. If you believe them and also the witnesses for the prosecution, it appears to me that they have established what to many persons may seem incredible, namely, that even a man of piety and virtue, occupying the position of a Bible reader and Sunday school teacher, may be guilty of committing a heinous and grossly immoral crime."

BALLANTINE AND BARODA.

A recent article in the *Sunday Times* on the present prosperous condition of Baroda recalled how sixty years ago the then ruler was deposed for cruelties and abuses culminating in an attempt to poison the British Resident. Strangely enough, it makes no mention of the part played by Serjeant Ballantine, who, after Hawkins and Henry Matthews had declined the brief, went out to India to defend the accused potentate before the Commission appointed to try him. His fee reached the then extravagant figure of 10,000 guineas. One little incident of the journey out is amusing enough. Ballantine was not a profound lawyer and rarely looked up precedents, and his clients on this occasion supplied him with a small library of Indian law books in a mahogany box. "On my way to Indi-ar," said the Serjeant, relating the story in his stuttering, hesitating way, "I put in a few days in Paris. One morning I said to my juni-ar, 'My de-ar boy, just go out and buy me a nice selection of French lit-e-ra-ture; you know the style I like—yellow backs, just a little warm—and buy a good many of them, we are in for a long journey —and begad! he came back with the nicest selection of French lit-e-ra-ture you could possibly imagine, Paul de Kock and Guy de Maupassant, and so on. Well, we didn't know where to pack them, but all at once I thought of the mahogany box, so we turned the law books out and we put the French books in." "And what became of the law books?" asked someone. "Ah! begad! I quite forgot to in-qui-ar," said Ballantine.

A HYMN OF PRAISE.

In his reminiscences, Ballantine tells of his arrival by train in the territory of his client. "Lunch, called by some name that gave it importance, was prepared; and I had roses showered upon me and addresses presented to me by men whom I was given to understand were of high class and position." A hymn was even composed in his honour:—

> "May your merits be praised in every nook and corner of our country and may our king be restored to his freedom and throne!
> Then will your praises be sung everywhere.

Is it not natural that the news of the arrest of the King of our Gujarath should produce a sensation in our bosom? O! give us your helping hand!

May pure justice be dealt to our prince in a pure and undefiled way! In that case, we shall sing merry song expressive of our great glory."

The result of the proceedings was inconclusive, for the Commissioners were divided in opinion, but superior power stepped in and the royal defendant was deposed by proclamation. The case was practically the end of Serjeant Ballantine's practice, which evaporated during his absence in India. He, whose ordinary fee had formerly been a hundred guineas, was now glad to appear for ten. Nor did he ever recover the lead he had lost.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Governor-General Designate of Canada.

Sir,—In your first leader in your issue of the 6th April, you draw attention to the fact that the Marquis of Lorne, a former holder of the office, was a commoner. Moreover, you remind us that "Professor Freeman was never weary of insisting, even the eldest son of a peer, the future holder of the peerage, is a commoner as long as his father is alive, unless, of course, he himself has been created a peer, and whatever title he bears is simply a title of courtesy which carries with it no political privileges above those of other commoners."

May I recall an exception to this generally accepted rule? During one of Lord Salisbury's governments, the eldest son of the Duke of Northumberland, Earl Percy, was summoned to the House of Lords under one of the Duke's lesser titles, namely, the Barony of Lovaine, and as Lord Lovaine he sat in the Lords with his father. He still bore the courtesy title of Earl Percy. His own eldest son, Lord Warkworth was, I believe, in the House of Commons at the same time.

The Barony of Lovaine had been similarly used on an earlier occasion. In both cases no new peerage was created.

South Square, W.C.1. HAROLD K. ELLISON.
9th April.

[Earl Percy referred to in the above letter was summoned to sit in the House of Lords as Baron Lovaine (one of his father's titles) by writ, which is set out in the Lords' Journals for 1st August, 1887; in other words, he was by that writ created a peer, and we read that he took his seat on the Barons' Bench next below Lord Rodney. Unless he had been created a peer he could not have sat in the House of Lords during the lifetime of his father, the Duke of Northumberland. The power of the Crown to accelerate in certain cases the descent of a peerage so as to make it pass during the life of the holder to his eldest son and heir apparent, just as if the parent were dead, is dealt with in "Palmer's Peerage Law in England," chap. VIII.—ED., *Sol. J.*]

Police Cars and the Speed Limit.

Sir,—Surely the writer of the article on "Police Cars and the Speed Limit" and the statement attributed to the Automobile Association (p. 240) are confusing ideas. To "obstruct" the police it is necessary, by warning an offender or otherwise, to prevent the police from detecting or punishing an offence. To adopt the view in the last paragraph of your article, the effect of displaying a notice "This is not a police car" would "encourage" law breaking. It would, therefore, *ex hypothesi*, far from hindering or obstructing the police in detecting offences, actually provide offences for them to detect. It could never have the effect of saying "Look out, the police are watching for you," which is the essence of the "obstruction" dealt with in the cases you refer to. An incitement to a person to commit an offence such as suggested might support another charge, but certainly cannot obstruct the police in the execution of their duties. The two ideas have nothing in common.

Sheffield. CYRIL STYRING.
10th April.

[We have submitted the above letter to the contributor of the article referred to, and the following is his reply:—"The encouragement of law breaking may well coexist with a warning that the police are in certain parts of the road to detect law breaking. The article clearly stated that it is highly relevant to consider whether the display of the notice succeeds in obstructing the police, and that each case has to be judged on its own facts. It is not correct that the notice 'certainly cannot obstruct the police in the execution of their duty.' Its systematic use may by implication amount to a warning that cars without the notice are police cars. (cf. *Betts* v. *Stevens* [1910] 1 K.B. 1)."—ED., *Sol. J.*]

Notes of Cases.

Appeals from County Courts.

In re **an Arbitration between the Ecclesiastical Commissioners for England and the National Provincial Bank Ltd.**

Greer, Maugham and Roche, L.JJ. 5th March, 1935.

LANDLORD AND TENANT—AGRICULTURAL HOLDING—AGRICULTURAL ASSETS CHARGED BY TENANT—END OF TENANCY—CHARGE BECOMING FIXED—CLAIM BY CHARGEE TO MONEYS DUE FROM LANDLORD—ARBITRATION—AGRICULTURAL HOLDINGS ACT, 1923 (13 & 14 Geo. 5, c. 9), s. 16—AGRICULTURAL CREDITS ACT, 1928 (18 & 19 Geo. 5, c. 43), s. 5.

Appeal from Huntingdon County Court.

The Commissioners let an agricultural holding to a tenant from year to year from the 11th October, 1926. On the 7th October, 1932, he served notice terminating the tenancy. In April, 1933, he charged his "farming stock and other agricultural assets" as defined by s. 5 (7) of the Agricultural Credits Act, 1928, in favour of the bank by a charge under the Act. The charge was registered in May. The tenant quitted the holding on the 11th October, and the charge became fixed on the 14th October, on which date the bank appointed a receiver of the assets comprised in the charge. In December, the tenant was adjudicated bankrupt and a trustee in bankruptcy appointed, but no claim arising out of the termination of the tenancy was made by either against the landlords. Within two months after the end of the tenancy, the bank claimed from the landlords all the sums due to the tenant on its termination free of deductions. The landlords disputed the right of the bank to make the claim, and, in any event, claimed to be entitled to make certain deductions. Formal statutory claims having been made, an arbitrator was appointed under the Agricultural Holdings Act, 1923. After the contention of the landlords had been put forward, the arbitrator by consent continued the hearing without prejudice to it. On a case stated, the county court judge held that there was no valid submission to arbitration.

GREER, L.J., dismissing the appeal, said that the bank was not the tenant, being assignee of the tenant's assets, and not of his tenancy agreement. Therefore it was not entitled to an arbitration under s. 16 of the Agricultural Holdings Act, 1923, and the arbitrator had no jurisdiction.

MAUGHAM and ROCHE, L.JJ., agreed.

COUNSEL: *P. B. Morle* and *Cyril Conner*; *Eversheds*, K.C., and *C. L. Henderson*.

SOLICITORS: *Wilde, Sapte & Co.*; *Milles, Jennings, White and Foster*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Waring *v.* **Kenyon & Co. (1927) Limited.**

Lord Hanworth, M.R., Romer, L.J., and Eve, J.
20th March, 1935.

NEGLIGENCE—MOTOR CAR—STATIONARY VEHICLE—UNLIGHTED—WHETHER CONTRIBUTORY NEGLIGENCE—LIMITS OF VISION.

Appeal from Chorley County Court.

A motor lorry belonging to the defendants was travelling after dark on the road from Manchester to Chorley. The night was rainy and misty. The tail light of the lorry went out several times and the driver decided to seek assistance at a roadside filling station and garage, access to which was gained by a drive-in and a drive-out. As there was another car at the petrol pumps obstructing the way in, he pulled in close to the near-side of the roadway at a spot where the garage threw a certain amount of light. The lorry was 22 feet long and 6 feet wide and had no superstructure but the driver's cab. The plaintiff was in a small car driven by her nephew. He could not use his head-lights, but he used his side-lights. He admitted in his evidence that he could see about 15 feet in front and that he was driving at 15 miles an hour and could stop in 4 yards. Coming suddenly upon the lorry, he tried to pull out, almost missed it and struck the rear off-side. The plaintiff in consequence sustained injuries. The jury returned a verdict awarding her damages, and the county court judge entered judgment in her favour.

Lord HANWORTH, M.R., dismissing the appeal, said that the question was one of contributory negligence. The defendants had relied on an observation of Scrutton, L.J., in *Baker* v. *E. Longhurst Ltd.* [1933] 2 K.B. 461, at p. 468: "If a person rides in the dark he must ride at such a pace that he can pull up within the limits of his vision, and if, in those circumstances, he strikes something, either he is going too fast or he has not been keeping a proper look-out." But the lord justice did not there intend to lay down a proposition of law upon certain facts as a guide in all cases for the future. The law to be applied in this case was laid down in *Swadling* v. *Cooper* [1931] A.C.1, where *Butterfield* v. *Forrester*, 11 East 60, and *Bridge* v. *Grand Junction Railway Co.*, 3 M. & W. 244, were approved. There Lord Hailsham said that "the crucial question, upon which liability depended, was whether either party could by the exercise of reasonable care have avoided the consequences of the other's negligence." The principle of *Butterfield* v. *Forrester, supra*, had been accepted in *Baker* v. *E. Longhurst Ltd., supra*, and *Tart* v. *G. W. Chitty & Co.* [1933] 2 K.B. 453. This case was properly left to the jury.

ROMER, L.J., and EVE, J., agreed.

COUNSEL: *Lynskey*, K.C., and *F. Pritchard; Cave*, K.C., and *Nahum*.

SOLICITORS: *W. & A. Blackhurst*, of Liverpool; *Gibson and Weldon*, agents for *John Whittle, Robinson & Bailey*, of Preston.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Johnson Brothers (Dyers) Ltd. *v.* **Davison.**

Lord Hanworth, M.R., Romer and Roche, L.JJ.
29th March, 1935.

LANDLORD AND TENANT—GUARANTEE OF RENT—ASSIGNMENT—CONTEMPLATED BY COVENANT IN LEASE—WHETHER A SUBSTANTIAL ALTERATION.

Appeal from Sunderland County Court.

In 1932, the defendant's daughter took a lease of certain premises for five years, at a rent payable quarterly. It contained the usual covenant not to assign, transfer or underlet without the previous written consent of the landlords. There was also a covenant that if the tenant should become subject to the bankruptcy laws or, being a company, should enter into liquidation, there should be a power of re-entry. On the day the lease was granted, the defendant guaranteed the payment of the rent by his daughter. The guarantee was not to be revocable by notice or by reason of death. In October, 1933, an assignment was made with the assent of the landlords. Subsequently, the assignee was unable to pay the rent which fell into arrears. The county court judge held that there had been an alteration sufficient to excuse the surety from continuing liable under the guarantee.

Lord HANWORTH, M.R., allowing the appeal, said that the respondent relied on *Holme* v. *Brunskill*, 3 Q.B.D. 495, where it was said that the court "will hold that in such a case the surety himself must be the sole judge whether or not he will consent to remain liable notwithstanding the alteration, and that if he has not so consented he will be discharged." But this had to be read in connection with the earlier words: ". . . in cases where it is without inquiry evident that the alteration is unsubstantial or that it cannot be otherwise than beneficial to the surety, the surety may not be discharged." Here there was no substantial alteration. The lease contemplated that there might be an assignment and the surety knew the terms of the lease. The liability of the surety was established.

Romer and Roche, L.JJ., agreed.

COUNSEL: *H. T. Nelson; Cyril Salmon.*

SOLICITORS: *Alsop, Stevens & Collins Robinson* of Liverpool; *Isodore Goldman*, agent for *Lionel Woolf*, of Sunderland.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Clack *v.* **Clack.**

Avory, J., Hawke and Lawrence, JJ. 28th March, 1935.

HUSBAND AND WIFE—MAINTENANCE ORDER—HUSBAND'S RIGHT TO DEDUCT INCOME TAX—GENERAL RULES APPLICABLE TO ALL SCHEDULES OF THE INCOME TAX ACT, 1918, r. 19.

This was an appeal, by case stated, from an order made by a Metropolitan Magistrate, on a complaint by Mrs. Lilian Maud Clack, that the appellant, her former husband, Mr. David James Clack, had failed to pay her £24 19s., due under a maintenance order made in the same court on the 2nd February, 1932, on the ground of desertion. That order had been made under the provisions of the Summary Jurisdiction (Separation and Maintenance) Acts, 1895-1925, and directed the appellant to pay the respondent the sum of 30s. a week for herself and 5s. a week for each of her three children. The appellant paid the sum ordered for some time, but thereafter deducted income tax from the payments until the 13th June, 1934, by which date the sum deducted amounted to £24 19s. The appellant contended that there was no jurisdiction to make an order for payment of sums free of income tax as maintenance under the above Acts, and that the order of the 2nd February, 1932, did not purport to direct that the payments should be made without deduction of income tax. He cited *Smith* v. *Smith* (67 SOL. J. 749; [1923] P. 191). The respondent contended that the order of the 2nd February, 1932, specified the weekly sums which she was entitled to receive, and that the appellant ought not to make any deduction therefrom. The magistrate came to the conclusion that the order secured to the respondent the payment in full of weekly sums amounting to 45s., and that the appellant was not entitled to make any deduction therefrom in respect of income tax.

AVORY, J., said that the case raised a troublesome question, but he had come to the conclusion that the magistrate's order could not be sustained. By r. 19 of the General Rules, applicable to all Schedules of the Income Tax Act, 1918, the person making any annual payment was bound to pay income tax on those payments. On the authority of *Smith* v. *Smith, supra*, he (his lordship) was bound to hold that the payments made in this case were annual payments within the meaning of that rule, which also provided that the person to whom the payment was made should allow such deduction, and that the

person making the deduction should be acquitted and discharged of the amount so deducted. Once the conclusion was reached that the sum claimed by Mrs. Clack was in fact the aggregate of sums deducted by way of income tax by the appellant, it became clear that r. 19 applied, and that the appellant had no option in the circumstances but to make the deductions, and that it was the duty of the respondent to permit them to be made. The magistrate had no jurisdiction to order the appellant to pay that which he had been discharged from paying by the statute. Appeal allowed.

HAWKE and LAWRENCE, JJ., gave judgments to the same effect.

COUNSEL: *Acton Pile*, for the appellant; *Mrs. Clack*, in person.

SOLICITORS: *Percy Haseldine & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Parliamentary News.

Progress of Bills.

House of Commons.

Derwent Valley Water Board Bill.
Reported, with Amendments. [16th April.
Fylde Water Board Bill.
Reported, with Amendments. [16th April.
London County Council (General Powers) Bill.
Read Third Time. [18th April.
Ministry of Health Provisional Order (Guildford) Bill.
Read Second Time. [17th April.
Ministry of Health Provisional Order (Leigh Joint Hospital District) Bill.
Read First Time. [16th April.

Questions to Ministers.

HOUSING (FINANCIAL PROVISIONS) ACT.

Mrs. WARD asked the Minister of Health whether his attention has been called to the decision of the principal London building societies to reduce their rate of interest to purchasers for their own occupation to 4½ per cent.; and whether his Department have formed any estimate of the effect, if any, this decision will have upon advances made by a building society under s. 2 of the Housing (Financial Provisions) Act, 1933?

THE PARLIAMENTARY SECRETARY TO THE MINISTRY OF HEALTH (Mr. Shakespeare): Yes, Sir. In accordance with the agreement made between representatives of the building societies and my right hon. Friend, the rate of interest on advances made under the Act my hon. Friend mentions should in the area covered be in future no more than 4 per cent. and may be 3½ per cent. [17th April.

WORKMEN'S COMPENSATION.

Mr. RHYS DAVIES asked the Home Secretary what changes in the existing law would be required in order to bring it into conformity with the International Labour Convention, 1925, concerning workmen's accident compensation?

Sir J. GILMOUR: The most important change would be the introduction of compulsory insurance or some other system for ensuring the payment of the compensation in all circumstances in the event of the employer's insolvency. Other changes would also be involved in connection, for example, with the right to surgical treatment and provision of artificial limbs and surgical appliances, but I am afraid it would not be possible to explain these in detail within the limits of a Parliamentary reply.

[18th April.

Societies.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 16th April (Chairman, Mr. R. J. A. Temple), the subject for debate was: "That this House is in favour of the defence estimates for the present year." Mr. D. H. McMullen opened in the affirmative; Mr. L. J. Frost opened in the negative. The following members also spoke: Messrs. J. R. Campbell-Carter, M. V. P. Foulis and P. W. Iliff. The opener having replied, the motion was put to the vote. The voting for and against the motion was equally divided, and the Chairman having declined to exercise his casting vote the motion was left undecided.

Legal Notes and News.

Honours and Appointments.

The Secretary to the Minister of Health, Sir Arthur Robinson, G.C.B., C.B.E., has appointed Mr. G. E. YATES to be his private secretary.

Sir SHADI LAL, a member of the Judicial Committee of the Privy Council, has been elected an honorary bencher of Gray's Inn.

Mr. H. C. LOCKYER, solicitor, has been appointed Town Clerk of Acton in succession to Mr. John Morgan, who is retiring on September 30th next, after completing 40 years' service at the municipal offices. Mr. Lockyer was admitted a solicitor in 1927.

The Joint Brighton, Hove and Worthing Airport Committee have appointed Mr. T. J. Owen as Clerk and Solicitor to the Committee. Mr. Owen was admitted a solicitor in 1926.

Mr. John Harker, solicitor, has been appointed Clerk to the new North Westmorland Rural District Council. Mr. Harker was admitted a solicitor in 1904.

Mr. John Shiel Wall, Assistant Solicitor to the Stoke-on-Trent Corporation, has been appointed Assistant Solicitor to the Rotherham Corporation. Mr. Wall served his articles with Mr. Jos. Studholme, of Messrs. Sanderson, Tiffen and Co., of Berwick-upon-Tweed, and was admitted a solicitor in 1933.

Mr. R. S. Rigby, of Norwich, has been appointed Assistant Solicitor to the Isle of Ely County Council.

Professional Announcements.

(2s. per line.)

Messrs. Thomas Cooksey & Co., solicitors, of Coventry, announce that they have moved to new offices, their new address being 4, Queen Victoria-street, Coventry. The telephone number is 3873.

Solicitors & General Mortgage & Estate Agents Association.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

Under a resolution of the House of Commons passed in Committee of Ways and Means, and having statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913, the standard rate of income tax imposed for the year commencing 6th April, 1935, is 4s. 6d. in the pound.

The Friends of the National Libraries announce the completion of the purchase fund for the Paston Letters. In July, 1933, the Friends issued an appeal for £3,000 to secure for the nation those of the letters which had been separated from the main collection, acquired by the British Museum in 1866.

Under s. 7 (2) of the Architects Registration Act, 1931, the Registration Council are called upon to appoint annually a committee of eight persons, two of whom are to be nominated by the President of The Law Society. The present representatives of the Society, Mr. Harold Nevil Smart, C.M.G., O.B.E., and Mr. Dingwall Latham Bateson, M.C., have been re-appointed for 1935.

The Council of The Law Society, having considered the appeal addressed at St. James's Palace on the 1st March, 1935, by H.R.H. The Prince of Wales to the representatives of Local Authorities and others assembled there on that occasion, decided to subscribe towards the Fund for which His Royal Highness appealed. The Council accordingly have forwarded to the Secretary of King George's Jubilee Trust on behalf of the Society and its members a cheque for £1,000.

In accordance with the provisions of s. 59 (3) of the Unemployment Insurance Act, 1935, the Unemployment Insurance Statutory Committee give notice of their intention to make a report to the Minister of Labour on the financial condition of the Unemployment Fund. The Committee will take into consideration any representations made to them on this subject which are received on or before 8th May. Representations should be addressed to the Secretary to the Committee, Montagu House, Whitehall, S.W.1.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

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Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 2nd May, 1935.

	Div. Months.	Middle Price 24 April 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	116½	3 8 8	2 19 4
Consols 2½%	JAJO	88½	2 16 6	—
War Loan 3½% 1952 or after	JD	108	3 4 10	2 18 4
Funding 4% Loan 1960-90	MN	118½	3 7 6	2 18 10
Funding 3% Loan 1959-69	AO	104	2 17 8	2 15 5
Victory 4% Loan Av. life 29 years	MS	116	3 9 0	3 3 0
Conversion 5% Loan 1944-64	MN	121½	4 2 4	2 3 6
Conversion 4½% Loan 1940-44	JJ	113½	3 19 4	1 17 2
Conversion 3½% Loan 1961 or after	AO	108	3 4 10	3 0 11
Conversion 3% Loan 1948-53	MS	106¼	2 16 5	2 8 8
Conversion 2½% Loan 1944-49	AO	103	2 8 7	2 2 6
Local Loans 3% Stock 1912 or after	JAJO	96½	3 2 2	—
Bank Stock	AO	358½	3 6 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	90	3 1 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97	3 1 10	—
India 4½% 1950-55	MN	112xd	4 0 4	3 9 3
India 3½% 1931 or after	JAJO	95½	3 13 4	—
India 3% 1948 or after	JAJO	87½	3 8 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	120	3 15 0	3 7 3
Sudan 4% 1974 Red. in part after 1950	MN	114xd	3 10 2	2 17 10
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 17 10
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	112	4 0 4	2 9 4
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	108	3 14 1	3 8 10
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	102	3 13 6	3 11 3
Canada 4% 1953-58	MS	109	3 13 5	3 6 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 9
Nigeria 4% 1963	AO	115	3 9 7	3 3 7
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 4
South Africa 3½% 1953-73	JD	107	3 5 5	2 19 10
*Victoria 3½% 1929-49	AO	99	3 10 8	3 11 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	107	3 5 5	2 19 10
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	86	2 18 2	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96	3 2 6	—
Manchester 3% 1941 or after	FA	95	3 3 2	—
*Metropolitan Consd. 2½% 1920-49	MJSD	101½	2 9 3	—
Metropolitan Water Board 3% "A" 1963-2003	AO	100	3 0 0	3 0 0
Do. do. 3% "B" 1934-2003	MS	98½	3 0 11	3 1 1
Do. do. 3% "E" 1953-73	JJ	102	2 18 10	2 17 2
Middlesex County Council 4% 1952-72	MN	113	3 10 10	3 1 0
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 4 1
Nottingham 3% Irredeemable	MN	94	3 3 10	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 2
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	113	3 10 10	—
Gt. Western Rly. 4½% Debenture	JJ	124½	3 12 3	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	130½	3 16 8	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	128	3 18 2	—
Gt. Western Rly. 5% Preference	MA	116	4 6 2	—
Southern Rly. 4% Debenture	JJ	112	3 11 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 7 0
Southern Rly. 5% Guaranteed	MA	128	3 18 2	—
Southern Rly. 5% Preference	MA	116	4 6 2	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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HOWKINS & SONS, 12, Albert Street, Rugby. Tel. 59. Est. 1888.
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Printed in Great Britain by THE SOLICITOR'S LAW STATIONERY SOCIETY, LTD., at "Oyez House," Fetter Lane, London, E.C.4, and Published at 29, Breams Buildings, E.C.4 ('Phone: Holborn 1853). Agents—The United States and Canada: The Carswell Co., Ltd., 145-149, Adelaide Street West, Toronto 2, Canada; India: Higginbothams, Publishers, Mount Road, Madras; Australia and New Zealand: "The Times," 255a, George Street, Sydney, N.S.W. Saturday, 27th April, 1935.